

WILLIAM N. CANNON

IBLA 75-347

Decided June 12, 1975

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-6844.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonable diligence. Where a payment is sent from a town in eastern Texas to Salt Lake City, Utah, on October 30, and does not arrive until after November 1, and where the Post Office indicates that regular mail sent that distance would not normally arrive in two days, the lessee has not exercised reasonable diligence.

APPEARANCES: Harold W. Nix, Esq., Daingerfield, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

William N. Cannon appeals from the January 7, 1975, decision of the Utah State Office, Bureau of Land Management (BLM), which denied his petition for reinstatement of oil and gas lease U-6844. The lease had terminated by operation of law due to appellant's failure to pay the annual rental on time. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

[1] Leases terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the reason for late payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). Reasonable diligence is defined by regulation, 43 CFR 3108.2-1(c)(2):

The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments. (Emphasis added.)

In this case the anniversary date of appellant's lease was November 1, 1974, a Friday. Appellant mailed his payment on October 30, 1974, from Daingerfield, Texas, to Salt Lake City, Utah. It was not received by the BLM office in Salt Lake City until Monday, November 4, 1974.

The Utah State Office inquired of the Postmaster in Daingerfield, Texas, whether a letter sent from Daingerfield to the BLM in Salt Lake City could arrive in the period from the afternoon of October 30 to the close of business on November 1. The Postmaster stated that it was possible, if the letter were sent by airmail. <sup>1/</sup> The payment in this case was not sent by airmail, but rather, by first class mail. In other words, a letter sent on October 30 from Daingerfield, Texas, to Salt Lake City, Utah, by first class mail would not arrive by the close of business on November 1 in the normal course of mail delivery. For that reason alone, appellant's petition for reinstatement must be denied. 43 CFR 3108.2-1(c).

We note, in addition, that the appropriate regulation, 43 CFR 3108.2-1(c)(2), requires that payment be transmitted early enough to allow for normal delays in the collection, transmittal, and delivery of the mail. That portion of the regulation is keyed to the legislative history of 30 U.S.C. § 188(c) (1970). Two examples of

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<sup>1/</sup> The Postmaster wrote, "If the letter was airmailed from here to Salt Lake City on 10-30 there is a possibility that it might reach there on Nov. 1, 1974."

"unusual delays" are given in that history - transportation strikes and natural disasters such as the 1964 Alaskan earthquake. 1970 U.S. Code Congressional and Administrative News 3007. There is no evidence in this case of any unusual delays. We cannot say that mailing a payment this distance two days in advance of the due date takes into account "normal delays" in the handling of the mail. Indeed, it is clear that a letter in that instance might arrive on time only if there were no delays of any kind, but rather was handled with extraordinary dispatch.

There are, however, a number of cases decided by this Board which seem to indicate that any payment mailed from one point to another within the contiguous United States is acceptable as evidence of reasonable diligence so long as the payment was mailed two days before the due date. Francis Anglado, 18 IBLA 162 (1974); Karl Heinz Schober, 16 IBLA 382 (1974); Eason Oil Co., 16 IBLA 109 (1974); Sharon Rae Cook, 15 IBLA 424 (1974); Inexco Oil Co., 15 IBLA 422 (1974); R. G. Price, 8 IBLA 290 (1972). In none of the cited cases was there any evidence, as there is in this case, that the payments would normally take more than two days for delivery. In fact, in several of the cases we were informed by the Post Office that the mail could normally be expected to be delivered in two days. For that reason, all of the cases cited are distinguishable from the present case.

While it may constitute reasonable diligence to mail a letter two days before the due date if the evidence shows that normal deliveries (including "normal delays") are made within that time, it surely cannot constitute reasonable diligence to mail a letter two days before the due date if the delivery time between the point of deposit and the destination is normally more. To the extent that the cited cases imply that normal delays in the mail need not be considered, they may not be relied on as precedent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward Stuebing  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Frederick Fishman  
Administrative Judge

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